

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Section 304 of the)	CS Docket No. 97-80
Telecommunications Act of 1996)	
)	
Commercial Availability of Navigation Devices)	
)	
Requests for Waiver of)	
47 C.F.R. § 76.1204(a)(1))	
)	
West Liberty Telephone Company)	CSR-7177-Z
South Slope Cooperative Telephone Co.)	CSR-7143-Z
Radcliffe Telephone Company)	CSR-7142-Z
Farmers' and Business Mens' Telephone Co.)	
d/b/a F&B Communications)	CSR-7146-Z
Heart of Iowa Communications Cooperative)	CSR-7148-Z
Winnebago Cooperative Telephone Association)	CSR-7140-Z
Kalona Cooperative Telephone Co.)	CSR-7149-Z
Local Internet Service Co.)	CSR-7182-Z
Dumont Telephone Company)	CSR-7147-Z

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on Requests for Waiver Filed by Nine Iowa Cable Operators**

May 3, 2007

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**Comments of the Consumer Electronics Association
on Requests for Waiver Filed by Nine Iowa Cable Operators**

The Consumer Electronics Association ("CEA") submits these comments in response to petitions for waiver of Section 76.1204(a)(1) of the Commission's rules recently filed by nine cable operators in the state of Iowa: West Liberty Telephone Company, South Slope Cooperative Telephone Co., Radcliffe Telephone Company, Farmers' and Business Mens' Telephone Co. d/b/a F&B Communications, Heart of Iowa Communications Cooperative, Winnebago Cooperative Telephone Association, Kalona

Cooperative Telephone Co., Local Internet Service Co., and Dumont Telephone Co. (collectively, the “Iowa Petitioners”).

The Iowa Petitioners seek an apparently permanent waiver from compliance with the Commission’s common reliance rule. Petitioners cite no justification that has ever been recognized by the Commission as supporting any such exemption. Instead, they argue that because they have, with nine years’ notice of the upcoming common reliance deadline, purchased various and incompatible (even with each other) conditional access technologies that do not comply with the Commission’s rule, they should now be exempt from that rule. They admit, candidly, that as implemented by their conditional access vendors, the systems on which they propose to rely permanently (or at least indefinitely) would *not* constitute common reliance.

More fundamentally, Iowa Petitioners do not assert that they presently support CableCARDS for competitive devices, or that they will or can do so in the future, based on their apparently exclusive reliance on a “middleware” system as described in their Petitions.¹ Therefore, from the face of the Petitions, it appears that Petitioners are asking the Commission not only for a waiver of their common reliance obligations, but also to be permanently excused from providing separate security modules according to a

¹ Such support would not be grounds for a waiver, but it would at least provide a basis for the Commission to conclude that the separate security “provision” element of Section 1204(a), that became effective on July 1, 2000, has been complied with, and of compliance with the requirements of Section 76.640, which became effective on July 1, 2004. Petitioners have not asserted compliance with either regulation, nor have they sought any waiver or cited any exemption as to either regulation. Waivers should not be granted to Petitioners who are not in compliance with other, related regulations from which a waiver has not been sought. CEA hereby incorporates its Comments on the Comcast and NCTA waiver requests, *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7012-Z, Comments of the Consumer Electronics Association on Request for Waiver of 47 C.F.R. § 76.1204(a)(1) (June 15, 2006); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, CSR-7056-Z, Comments of the Consumer Electronics Association on the National Cable & Telecommunications Association Petition for Waiver of 46 C.F.R. § 76.1204(a) (Nov. 30, 2006), by reference.

nationally standard security interface, as is also required by Section 76.1204(a)(1), as well as by Section 76.640 of FCC regulations.

While CEA admires both the Petitioners' commitments to digital technology and their candor in acknowledging both the public policy purpose of common reliance and the fact that their vendors cannot fulfill this purpose, a waiver on such egregious terms and assumptions would completely frustrate the Congressionally mandated² purpose, not just of the common reliance rule, but of competitive availability of navigation devices itself. Such action by the Commission would allow replacement of CableCARDs, which *do* employ a nationally standard interface, with variegated, inconsistent, and proprietary "downloadable" systems that do *not*.

The Petitioners' requests illustrate why proprietary, non-scalable, nonportable, but nominally "downloadable" conditional access technologies that cannot provide a national security interface cannot satisfy either the common reliance rule *or* a cable operator's obligation to provide and support the operation of CableCARDs, or a successor standard national security interface, as required by Section 76.640 of the Commission's rules.³

At a minimum, based on the facts set forth in these Petitions, Petitioners who expect to rely on systems as described should have applied for waivers of their entire competitive availability obligations – not the common reliance element only. CEA, however, would oppose such waiver applications as well unless found to be truly *de minimis*. Petitioners adopted, and their vendors provided, their non-compliant system in

² 47 U.S.C. § 549.

³ 46 C.F.R. § 76.640(b) –“No later than July 1, 2004, cable operators shall support unidirectional digital cable products, as defined in § 15.123 of this chapter, through the provisioning of Point of Deployment modules (PODs) (now called CableCARDs) and services.” *See ex parte* letter from Julie M. Kearney to Marlene Dortch, Office of the Secretary, FCC, CS Docket No. 97-80, CSR-7131-Z, re “Emergency” petition of JetBroadband (Apr. 24, 2007)(“April 24 ex parte letter”) .

the face of a 1998 Commission rule, first scheduled for implementation in 2005, then in 2006, and then finally in 2007. Petitioners and their vendors cannot claim to have been surprised by this obligation, nor is it apparent from these requests – despite their acknowledgement of the beneficial public purposes -- that the Petitioners have taken any steps to fulfill this public purpose. Nor do they propose any grounds on which a waiver could be regarded, as the Commission rules require, as a temporary expedient.

A. The Iowa Petitioners Have Stated No Valid Grounds for a Waiver.

The only legal basis for a waiver cited by the Iowa Petitioners is the Commission’s general waiver rule, 47 C.F.R. § 1.3, which requires a showing of “good cause.” As the Petitioners note, “The FCC has consistently ruled that a waiver is appropriate only if the requested relief would not undermine the policy objective of the rule in question” and that “a deviation from the general rule . . . will serve the public interest.”⁴ The Petitioners come nowhere close to meeting this standard, as the only justification they propose would completely undermine the policy objective of Section 76.1204(a)(1), an objective declared by Congress.

⁴*Commercial Availability of Navigation Devices*, CS Docket 97-80, CSR-7182-Z, Local Internet Service Company, Petition for Waiver of Section 76.1204(a)(1) at 5 (Apr. 2, 2007) (“LISCO Petition”); CSR-7147-Z, Dumont Telephone Co., Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 12, 2007) (“Dumont Petition”); CSR-7177-Z, West Liberty Telephone Company, Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 13, 2007) (“West Liberty Petition”); CSR- 7142-Z, Radcliffe Telephone Company, Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 12, 2007) (“Radcliffe Petition”); CSR-7146-Z, Farmers’ and Business Mens’ Telephone Company, Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 12, 2007) (“F&B Petition”); CSR-7143-Z, South Slope Cooperative Telephone Co., Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 9, 2007) (“South Slope Petition”); CSR-7148-Z, Heart of Iowa Communications Cooperative, Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 7, 2007) (“Heart of Iowa Petition”); CSR-7140-Z, Winnebago Cooperative Telephone Association, Petition for Wavier of Section 76.1204(a)(1) at 4 (Mar. 5, 2007) (“Winnebago Petition”); CSR-7149-Z, Kalona Cooperative Telephone Co., Petition for Waiver of Section 76.1204(a)(1) at 4 (Mar. 1, 2007) (“Kalona Petition”).

Petitioners request a waiver because the conditional access technologies they have adopted or plan to adopt do not, by their own analysis, satisfy the common reliance rule.⁵ This cannot be a “special circumstance[]”⁶ that justifies a waiver. The Commission promulgated Section 76.1204 in 1998 – nine years ago – and has since extended the deadline for common reliance twice, most recently to July 1, 2007. In the interim, the Commission has reconfirmed its intent to enforce the rule several times,⁷ and the Court of Appeals for the District of Columbia Circuit has twice upheld the rule as a valid exercise of the Commission’s power.⁸ Despite – or perhaps because of – the Commission having set such an extended period for compliance, the Iowa Petitioners, like many larger cable operators, apparently gave no regard to this and other regulations pertaining to competitive availability of navigation devices. They chose instead to plan to adopt conditional access technologies from vendors who do not offer fully separable, portable conditional access solutions.⁹ Granting a waiver on such circumstances would appear to eviscerate competitive availability as well as common reliance, and perpetuate a status quo that, the Commission has observed, does not provide a level playing field for competitive entrants.¹⁰

⁵ See LISCO Petition at 10-11; Dumont Petition at 6-7; West Liberty Petition at 5-7; Radcliffe Petition at 5-7; F&B Petition at 5-7; South Slope Petition at 5-7; Heart of Iowa Petition at 5-7; Winnebago Petition at 6-7; Kalona Petition 5-7. The language of all the Iowa petitions is essentially identical.

⁶ See, e.g., South Slope Petition at 4.

⁷ See discussion, *Commercial Availability of Navigation Devices*, Second Report And Order, CS Docket No. 97-80 ¶¶ 31-34 (rel. Mar. 17, 2005) (“March 2005 SR&O”).

⁸ *General Instrument Corp. v. FCC*, 213 F.3d 724 (D.C. Cir. 2000); *Charter Communs., Inc. v. FCC*, 460 F.3d 31 (D.C. Cir. 2006).

⁹ *Supra*, n.5. By Petitioners’ own admission, these technologies are not suitable for common reliance.

¹⁰ March 2005 SR&O at ¶28. “CableCARD-equipped devices are available at retail and are being used by consumers. Yet it is clear from the record that the market for equipment used in conjunction with the distribution of digital cable video programming presently remains a nascent market.”

The Commission has already determined that when digital features such as the ones cited by the Petitioners are “already offered to [an operator’s] entire customer base,” a waiver is not “necessary to assist the development or introduction” of new services.¹¹ Petitioners run all-digital systems and have no need or ability to make spectrum available by discontinuing an analog signal. Therefore, the Petitioners cannot meet the required showing of necessity.

B. Waivers Would Deny Rural Customers Choice in Navigation Devices.

A waiver for the Iowa Petitioners would reduce rather than increase the options available to rural MPVD subscribers. As Petitioners point out, many rural subscribers are “located too distant from terrestrial television stations to receive reliable and good quality over-the-air transmissions.”¹² This makes a robust market for competitive navigation devices even more vital for rural customers. If Petitioners can continue to offer set-top boxes that use proprietary, incompatible conditional access technologies, their subscribers will be unable to use the digital features – basic or advanced – of navigation devices purchased at retail. The market for such devices in rural areas will continue to be bereft of competition.

The portability of navigation devices is as important if not more important in rural areas, which include vast regions of the American landscape. Many rural cable operators, as illustrated by the Iowa Petitioners, have small subscriber bases. Inviting rural regions, in Iowa or elsewhere, to opt out of the national portability and common reliance requirements would condemn these areas of the country to persist as a patchwork of incompatible conditional access technologies, with each city or local area employing its

¹¹ Comcast Order at 9 ¶ 17.

¹² *E.g.*, South Slope Petition at 7.

own non-portable standard. If an Iowa family cannot move to a different town and have its retail-purchased navigation devices, such as a Digital Cable Ready TV receiver or a TiVo model, continue to operate, then no viable retail market can emerge.

Hence, what is at stake here is not “just” common reliance, important as that is. Approval of these Petitions on the grounds stated would appear to be the permanent approval of abandonment of the CableCARD, which *does* provide for a nationally standard security interface as explicitly recognized in Commission rules, and replacement by any number of local, proprietary, and non-interoperable security systems that admittedly do not and cannot. Thus, Petitioners are inviting the Commission to slam the door on Congress’s explicit instruction to the Commission, in consultation with national standards organizations, to *assure* the competitive availability of navigation devices, including nationally marketed (digital) television receivers, from manufacturers and vendors not affiliated with the local cable operator.

C. The Iowa Petitioners Are Correct That Proprietary, Nonportable Conditional Access Technology Do Not Satisfy the Commission’s Rules.

CEA has previously argued that granting waivers to small cable operators will be no long-term favor, because the very market conditions that led the Commission to mandate support for separable security and institute the common reliance rule have left small operators at the mercy of the dictates of two dominant set-top box vendors.¹³ Even before the Commission recognized the *potential* of downloadable security to provide for

¹³ *In the Matter of Implementation of Section 304 of the Telecommunications Act of 1996*, CS Docket No. 97-80, CSR- 7109-Z - 7112, CSR-7114-Z, CSR-7115-Z, CSR-7117, Comments of CEA on the NPG Cable, Inc., Atlantic Broadband Finance, LLC, Orange Broadband Operating Company LLC and Carolina Broadband, LLC, Armstong Utilities, Inc., The World Company, d/b/a Sunflower Broadband, Cequel Communications, LLC d/b/a Suddenlik Communications, Bresnan Communications, LLC Requests for Waiver of 47 C.F.R. § 76.1204(a)(1) at 1 (Mar. 12, 2007).

nationally level playing field with advantages over the national CableCARD interface,¹⁴ CEA recognized this potential, and CEA invited further developments so long as a “level playing field” for competitive availability could be achieved, via true separation of security from other functions, and a licensing regime that complies with FCC regulation.¹⁵ But the conditional access technologies on which the Iowa Petitioners base their requests for waiver are, as Petitioners describe, no more suitable for common reliance than are integrated set-top boxes from the entrenched vendors.¹⁶ As CEA recently pointed out in an *ex parte* letter to the Commission, a multitude of conditional access systems with a downloadable element that are not nationally portable would inhibit the development of any retail market for navigation devices and would effectively nullify the entire Congressional mandate of assuring competition via FCC regulations, as required by Section 629 of the Telecommunications Act.¹⁷

The Widevine and NagraVision technologies are not portable, as they require both the set-top box and headend facilities (and, in the case of NagraVision, a nonstandard removable security module) to be supplied by a single vendor.¹⁸ A platform for common reliance, besides being nationally portable, must include:

- (1) a national interface so that a DTV television receiver or other competitive product can be nationally marketed and moved by the consumer from one local system to another,

¹⁴ Public Notice, FCC, CS Docket No. 97-80, Commission Reiterates That Downloadable Security Technology Satisfies the Commission’s Rules On Set-Top Boxes and Notes Beyond Broadband Technology’s Development of Downloadable Security Solution (rel. Jan. 10, 2007).

¹⁵ *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Letter from consumer electronics and information technology companies and the CEA to Marlene H. Dortch, Office of the Secretary, FCC, Re : Proposal for Bi-Directional Digital Cable Compatibility and Related Issues (Nov. 7, 2006); *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the CEA on NCTA Downloadable Security Report (Jan. 20, 2006) ; *Commercial Availability of Navigation Devices*, CS Docket No. 97-80, Comments of the Computer Companies (Jan. 20, 2006); *supra* April 24 *ex parte* letter.

¹⁶ See *supra* n.5.

¹⁷ April 24 *ex parte* letter, *id.*

¹⁸ *Id.*

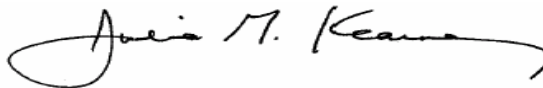
- (2) manufacturer input into the specification and any planned changes, and review prior to final adoption,
- (3) reasonable host device implementation specifications and support for competitive home networks,
- (4) self-certification of implementation,
- (5) support of competitive home networks,
- (6) true renewability to the software, including updates to the host end of the interface via firmware,
- (7) licensing terms that comport with FCC regulations limiting MSO control over devices to assurance against theft of service and harm to the cable network, and
- (8) compliance with all other FCC regulations pertaining to cable systems and competitive availability of devices.¹⁹

The Petitioners have admitted that their future plans cannot meet the most basic of these requirements and have not addressed the others.

Conclusion

For the forgoing reasons, the petitions for waiver of Section 76.1204(a)(1) of the Commission's rules by the nine Iowa Petitioners should be denied.

Respectfully submitted,



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¹⁹ *Id.* at 9-10.

CERTIFICATE OF SERVICE

I do hereby certify that on May 3, 2007, I caused a true and correct copy of the foregoing Comments of the Consumer Electronics Association on the Requests for Waiver Filed by Nine Iowa Cable Operators to be served via U.S. mail, on the following:

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/s/ Patricia O'Keefe
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